

Message Text

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ACTION SNM-05

INFO OCT-01 ARA-14 ISO-00 DEAE-00 CIAE-00 INR-10 IO-14
JUSE-00 NSAE-00 CTME-00 TRSE-00 ICA-20 NSC-05
OES-09 OMB-01 L-03 /082 W
-----053056 252055Z /23
P 252017Z JUL 78
FM AMEMBASSY PORT OF SPAIN
TO SECSTATE WASHDC PRIORITY 2717

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E.O. 11652: N/A
TAGS: SNAR, TD
SUBJECT: NARCOTICS LAWS
REF: STATE 170187

1. THE OPERATIVE NARCOTICS LAW IN TRINIDAD AND TOBAGO IS THE NARCOTIC CONTROL ORDINANCE, 1961 (ACT NO. 27 OF 1961). A COPY OF THE ORDINANCE HAS BEEN SENT TO S/NM VIA DEPARTMENTAL FACILITIES. THE LAW IS CONSIDERED OUTDATED BY POLICE HERE, AND ATTORNEY GENERAL'S OFFICE IS WORKING ON EITHER A REVISION OR AN ENTIRELY NEW LAW. HOWEVER, THE NECESSARY LEGAL DRAFT KG COULD TAKE UP TO THREE YEARS, BASED ON PAST PERFORMANCE.

2. POSSESSION: THE ORDINANCE MAKES NO DIFFERENTIATION BETWEEN TYPES OF NARCOTICS. POSSESSION OF "ANY NARCOTIC," UPON SUMMARY CONVICTION (I.E. UPON A PLEA OF "GUILTY") CALLS FOR A JAIL TERM OF NOT LESS THAN SIX AND NOT MORE THAN EIGHTEEN MONTHS. CONVICTION OR INDICTMENT IS PUNISHABLE BY A JAIL TERM OF SIX MONTHS TO SEVEN YEARS. THERE IS NO QUALIFYING AMOUNT SPECIFIED IN THE LAW, BUT GENERAL PRACTICE HERE IS THAT THE LARGER THE AMOUNT THE MORE SEVERE THE PENALTY. PENALTIES FOR POSSESSION ARE LESS SEVERE THAN UNCLASSIFIED

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PENALTIES FOR TRAFFICKING BUT AS SEVERE AS FOR CULTIVATION. GENERALLY, HOWEVER, FIRST OFFENDERS ARE FINED, THE AMOUNT DEPENDING ON THE SEVERITY OF THE OFFENSE.

3. TRAFFICKING: AGAIN, THE ORDINANCE CONSOLIDATES ALL NARCOTICS INTO A GENERAL TRAFFICKING OFFENSE. CONVICTION FOR TRAFFICKING, OR POSSESSION FOR THE PURPOSE OF TRAFFIC-

KING, REQUIRES A FOURTEEN YEAR JAIL TERM. THIS SENTENCE DOES NOT APPEAR MANDATORY UPON CONVICTION, BUT NO LEEWAY IS WRITTEN INTO THE LAW. TRAFFICKING IS NOT DEFINED BY ANY MINIMUM AMOUNT BUT RATHER AS THE "IMPORTATION, EXPORTATION, MANUFACTURE, SALES, GIVING, CHEMISTRY, TRANSPORTATION, DELIVERY, OR DISTRIBUTION...OF A NARCOTIC OR ANY SUBSTANCE REPRESENTED...TO BE A NARCOTIC OR THE MAKING OF ANY OFFER IN RESPECT THEREOF." THERE IS NO SPECIFIC CONSPIRACY TO TRAFFIC OFFENSE OTHER THAN THE GENERAL OFFENSE DESCRIBED ABOVE.

4. PROSECUTIONS FOR POSSESSION OFFENSES, IF THE ACCUSED PLEADS NOT GUILTY, ARE CONDUCTED AS IF THE OFFENSE WAS TRAFFICKING. AT THE CONCLUSION OF CASE SUBMISSIONS BY BOTH THE PROSECUTION AND DEFENSE, THE COURT DETERMINES WHETHER OR NOT THE ACCUSED WAS IN POSSESSION OF THE NARCOTIC. (A) IF NOT, THE ACCUSED IS ACQUITTED. (B) IF THE COURT FINDS THE ACCUSED WAS IN POSSESSION OF THE NARCOTIC, HE IS GIVEN THE OPPORTUNITY TO ESTABLISH HE WAS NOT IN POSSESSION FOR PURPOSES OF TRAFFICKING. THE STATE MAY ALSO SUBMIT EVIDENCE TO ESTABLISH THE OPPOSITE CONTENTION. (B1) IF THAT PURPOSE IS NOT PROVEN, THE ACCUSED IS ACQUITTED ON THE TRAFFICKING CHARGE BUT CONVICTED ON THE POSSESSION CHARGE. (B2) IF THAT PURPOSE IS PROVEN, THE ACCUSED IS CONVICTED AND SENTENCED ACCORDING TO THE MORE SEVERE TRAFFICKING CHARGE.

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5. CULTIVATION: EXCEPT FOR A PERSON WITH A LICENSE FROM THE MINISTER OF HEALTH, ANYONE WHO CULTIVATES, GATHERS OR PRODUCES ANY OPIUM POPPY, MARIJUANA, OR COCA PLANT IS LIABLE, UPON SUMMARY CONVICTION, TO IMPRISONMENT OF 18 MONTHS, OR UPON CONVICTION OR INDICTMENT, TO A JAIL TERM OF SEVEN YEARS. ELABORATION OR MANUFACTURE OF NARCOTIC SUBSTANCES IS PROHIBITED BY THE TRAFFICKING SECTION.

6. FINANCIAL: THERE IS NO OFFENSE IN THE LAW FOR FINANCIAL SUPPORT OF CULTIVATION, ELABORATION, OR TRAFFICKING. TRINIDAD AND TOBAGO HAS A STRICT AND VIGOROUSLY ENFORCED CURRENCY CONTROL LAW, THE "EXCHANGE CONTROL ACT, 1970." ALL FOREIGN CURRENCY TRANSACTIONS, FOREIGN BANK ACCOUNTS, AND HOLDING OF FOREIGN ASSETS MUST BE AUTHORIZED AND APPROVED BY THE CENTRAL BANK.

7. OTHER OFFENSES: THREE OTHER SPECIFIC NARCOTICS OFFENSE ARE MENTIONED IN THE ORDINANCE. (A) SMOKING OPIUM, BEING PRESENT IN AN "OPIUM DEN," AND POSSESSION OF OPIUM SMOKING DEVICES ARE PUNISHABLE BY IMPRISONMENT FOR THREE MONTHS, A FINE OF NOT LESS THAN TT \$50 OR MORE THAN TT \$100 (US DOLS

20 TO 40), OR BOTH THE JAIL TERM AND THE FINE. (B) GOING TO TWO PHYSICIANS WITH THE SAME MALADY SO AS TO RECEIVE TWO PRESCRIPTIONS FOR A NARCOTIC IS PUNISHABLE BY A FINE OF TT DOLS 50. (C) SENDING A NARCOTIC THROUGH THE POST IS PUNISHABLE, UPON SUMMARY CONVICTION, TO IMPRISONMENT FOR NOT UNCLASSIFIED

LESS THAN SIX BUT NOT MORE THAN EIGHTEEN MONTHS AND/OR A FINE OF MORE THAN TT DOLS 200 BUT LESS THAN TT DOLS 1000, AND UPON INDICTMENT, TO A PRISON TERM OF NOT LESS THAN SIX MONTHS BUT NOT MORE THAN SEVEN YEARS, AND/OR A SIMILAR FINE.

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OES-09 OMB-01 L-03 /082 W
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8. CRIMINAL PROCEDURE: (A) THERE IS NO SPECIAL PERIOD OF INVESTIGATIVE DETENTION IN THE LAW. USUALLY, ARRESTEES ARE PROCESSED AND GRANTED BAIL THE SAME DAY. THE EMBASSY IS NOTIFIED OF ANY ARRESTS OF USC'S WITHIN ONE DAY. (B) IN OUR EXPERIENCE, BAIL IS ALMOST ALWAYS GRANTED PRIOR TO TRIAL, PARTICULARLY WHEN A USC IS INVOLVED. (C) THE AVERAGE TRIAL FOR A POSSESSION VIOLATION TAKES ONE DAY AND CAN USUALLY BE SCHEDULED WITHIN A WEEK, PARTICULARLY FOR NONRESIDENTS. THERE IS NO REVIEW OR CONFIRMATION PROCEEDING. THE APPEALS PROCESS CAN TAKE YEARS UNTIL A DECISION IS AFFIRMED OR REVERSED. IF THE INITIAL TRIAL IS CONTESTED OR AT ALL COMPLICATED, THE NATURE OF LEGAL PROCESS HERE CAN DELAY A DECISION FOR UP TO THREE YEARS. THERE IS NO PUBLIC DEFENDER FOR MAGISTRATES' COURT, WHERE MOST POSSESSION OFFENSES ARE HEARD, BUT FOR AN INDICTABLE OFFENSE THE COURT MAY APPOINT AN ATTORNEY FOR AN INDIGENT CLIENT. ADEQUATE LAWYERS EXIST TO TAKE NARCOTICS CASES.

THE FEES VARY WIDELY FROM CASE TO CASE, BUT ARE USUALLY BELOW US STANDARDS. PAROLE PROVISIONS ARE SIMILAR TO THE US, AND CONVICTED OFFENDERS MAY BE PUT ON PROBATION IN LIEU OF IMMEDIATE SENTENCING. FINALLY, IN MOST USC POSSESSION CASES, A MODERATE FINE, VARYING FROM TT 100 TO 1000 IS ASSESSED, (MORE FOR COCAINE AND OPIATES THAN MARIJUANA AND UNCLASSIFIED

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DEPENDENT ON THE AMOUNT) BUT THE OFFENDER IS NOT EXPELLED AND IS FREE TO RETURN TO TRINIDAD IN THE FUTURE.

9. THE SCHEDULE OF CONTROLLED SUBSTANCES UNDER THE LAW IS LIMITED AND HAS NOT BEEN REVISED SINCE 1961. SOME DANGEROUS DRUGS NOT LISTED UNDER THE ORDINANCE ARE INSTEAD PROSECUTED UNDER MORE GENERAL LEGAL PROVISIONS CONCERNING POSSESSION OF STOLEN OR ILLEGAL GOODS, FOR WHICH PENALTIES ARE LESS SEVERE. THESE SUBSTANCES INCLUDE THE MORE EXOTIC SYNTHETICS. O'MAHONY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DRUG CONTROL, LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 25 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978PORTO02152
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780305-0501
Format: TEL
From: PORT OF SPAIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780723/aaaaatdd.tel
Line Count: 192
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ccb4676d-c288-dd11-92da-001cc4696bcc
Office: ACTION SNM
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 170187
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 27 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1894705
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS
TAGS: SNAR, TD
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/ccb4676d-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014